

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO: 5:01-CR-276-2-FA(3)
5:06-CR-92

UNITED STATES OF AMERICA

v.

MEMORANDUM OPINION AND
ORDER

DONALD MORRISON

Pending before the court is defendant's motion for recusal. Under 28 U.S.C. § 144, a judge shall recuse himself in cases in which the party seeking recusal files a timely and sufficient affidavit stating the judge has a personal bias or prejudice against either the affiant or in favor of any adverse party. The affidavit must allege a personal bias from an extrajudicial source. See Sine v. Local No. 992 Int'l Brotherhood of Teamsters, 882 F.2d 913, 914 (4th Cir. 1989).

Under 28 U.S.C. § 455, recusal is appropriate "if a person with knowledge of the relevant facts might reasonably question [a judge's] impartiality." United States v. Cherry, 330 F.3d 658, 665 (4th Cir. 2003). On appeal, recusal decisions are reviewed under an abuse of discretion standard. United States v. Carmichael, 726 F.2d 158, 162 (4th Cir. 1984).

Recusal is not warranted under either statute.* No person with knowledge of the relevant facts could "reasonably" question the undersigned's impartiality in this matter. Basically,

* Defendant has not complied with the procedural requirements under 28 U.S.C. § 144. However, even if he had done so, recusal would still not be warranted.

defendant is not happy with various rulings of the court in his cases. However, as the court has advised defendant on numerous occasions, he is free to take up all these issues on appeal after he is sentenced.

Based on the foregoing, defendant's motion is DENIED.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record, the United States Marshal, and the Probation Office of this court.

IT IS SO ORDERED this 25th day of July, 2007.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
United States District Judge